

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS ARREDONDO-VALENZUELA,

Defendant - Appellant.

No. 05-30103

D.C. No. CR-04-00198-EFS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Jesus Arredondo-Valenzuela appeals from the 57-month sentence imposed following his guilty-plea conviction for being an alien found in the United States

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S. C. § 1291, and we affirm.

We reject Arredondo-Valenzuela's contention that his sentence was unreasonable under *United States v. Booker*, 543 U.S. 220 (2005). The district court calculated the advisory Guidelines range, considered and rejected Arredondo-Valenzuela's contentions regarding sentence reductions for cultural assimilation and early disposition, weighed the 18 U.S.C. § 3553(a) sentencing factors, and imposed a sentence at the low end of the advisory Guidelines range. *See United States v. Plouffe*, 436 F.3d 1062, 1063 (9th Cir.), *as amended by* 445 F.3d 1126, *cert. denied*, 2006 U.S. LEXIS 4118 (2006).

Arredondo-Valenzuela also contends that his constitutional rights were violated by the use of a prior conviction to enhance his sentence because he did not admit to the prior conviction and it was not proven to a jury beyond a reasonable doubt. This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See also United States v. Weiland*, 420 F.3d 1062, 1079, n.16 (9th Cir. 2005) (noting that *Almendarez-Torres* is binding precedent unless and until it is explicitly overruled by the Supreme Court).

AFFIRMED.